United States Court of Appeals
For the Eighth Circuit

The Northern Trust Company, as Trustee, Appellee, vs. Robert I. Clausen, H. B. Surkamp, and Hadley P. Stonner, Appellants.	No. 71-1366.

MOTION TO AFFIRM

Comes now The Northern Trust Company, as Trustee, appellee herein, and moves this Court to affirm the interlocutory order of the District Court that is the subject of this appeal upon the grounds that the questions presented for review are so unsubstantial as not to need further argument. In support whereof, appellee respectfully states that:

1. On February 5, 1971, appellee filed Cause No. 71 C 76 (3) in the United States District Court for the Eastern District of Missouri, which is an action for the balance due on a note after foreclosure of the Deed of Trust covering certain real estate securing said note.

2. Subsequently, appellants filed Cause No. 52930 in the Circuit Court of Boone County, Missouri against appellee and others to set aside said foreclosure sale.

3. On May 18, 1971, appellants filed their motion to stay all proceedings in the federal action pending adjudication of proceedings in the state case.

4. On or about June 10, 1971, the District Court entered its interlocutory order denying appellants' motion to stay. In its Order, the District Court granted appellants leave to amend their responsive pleading to assert any counter-

claims or defenses presently asserted in the state court action which they may wish to assert in this case.

5. On June 30, 1971, appellants filed their Answer and Counterclaim in Cause No. 71 C 76 (3), asserting all claims and defenses raised in the state court action.

6. As the District Court stated in its interlocutory order appellants' counsel admits appellants' counterclaim contains "no novel questions of Missouri law" and no issues "which could not be adjudicated in a federal court."

7. As a result of the filing of appellants' Answer and Counterclaim in Cause No. 71 C 76 (3), the arguments asserted by appellants in their Motion to Stay all Proceedings are now moot.

Respectfully submitted

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By /s/ R. R. S.
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Proof of Service

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record for all parties to the above cause by depositing same in an envelope addressed to such attorneys at their address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U. S. Post Office mail box in St. Louis, Missouri, on the 14th day of July, 1971.

R. R. S.